



**LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION**

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December 17, 2012

Chief Phillip L. Sanchez
Pasadena Police Department
207 N. Garfield Avenue
Pasadena, California 91101

Re: J.S.I.D. File # 12-0207
Pasadena Police Department File # 12004548

Dear Chief Sanchez:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the March 24, 2012, fatal shooting of Kendrec McDade by Pasadena Police Department Officers Matthew Griffin and Jeffrey Newlen. It is our conclusion that the officers acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on March 25, 2012, at 1:45 a.m. The District Attorney Response Team, comprised of Deputy District Attorney Deborah Delpont and District Attorney Senior Investigator Heinz Naas, responded and was given a briefing and a walk-through of the scene.

The following analysis is based on reports prepared by the Pasadena Police Department (PPD), submitted to this office by Detective Jason Van Hecke, PPD, Homicide Assault Unit. The involved officers provided voluntary statements which were considered as part of this analysis.

FACTUAL ANALYSIS

On March 24, 2012, at 11:04 p.m., Oscar Carrillo called 9-1-1 and reported that two men had put a gun in his face and stole his backpack in front of Arturo's Restaurant on Orange Grove Boulevard in the City of Pasadena. He stated that after buying tacos from the food truck parked in front of the restaurant he saw two men go into his car and take his backpack. He described the men as between the ages of 20 and 23 years old, with tall thin builds, wearing black pants, black sweaters and hats. One suspect was seen running south on Raymond Avenue and the other running west on Orange Grove Boulevard. At first, Carrillo said that only one robbery suspect had a gun. He then stated several times that both suspects had guns. Carrillo mentioned the presence of a gun eight times during the five minute 9-1-1 call.

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Pasadena Police Department Officers Matthew Griffin and Jeffrey Newlen were in full uniform working patrol in a marked black and white police car when they were dispatched to the robbery call. A review of the dispatch recordings shows that the officers were initially advised that there were two male suspects, one wearing a black sweater. One suspect was seen running southbound on Raymond Avenue and the other westbound on Orange Grove Boulevard. In route to the location, dispatch advised the officers that both suspects were armed with guns. The suspect descriptions were updated to two male suspects, tall and thin and both wearing black sweaters, black pants and hats.

Griffin and Newlen were traveling west on Orange Grove Boulevard when they saw a male matching the suspect's description in the middle of Fair Oaks Avenue approximately 20 yards north of their location.¹ Griffin turned right onto Fair Oaks Avenue and accelerated toward McDade. McDade looked in their direction then ran westbound into the back parking lot of the business at the northwest corner of the intersection.

Griffin saw McDade grab his right waistband with his right hand as soon as he began to flee. McDade's right hand was obscured by his shirt or some other article of clothing. His left hand was swinging back and forth in a typical running motion. Due to the fact that McDade matched the armed suspect's description and was running from the police in close proximity to the robbery location while clutching his waistband in a manner consistent with holding a gun, Griffin believed that McDade was in possession of a firearm. Concerned for his safety and his partner's safety, Griffin removed his service weapon from his holster with his right hand as he steered the police car with his left hand.

Newlen also observed McDade with his right hand bent toward his waist as if he were holding something. Based on his training and experience as a police officer, Newlen knew that it was common for individuals to conceal firearms in the waistband of their pants.² Told that both suspects had used guns in the robbery, Newlen believed that McDade was clutching a gun at his waistband. Newlen recalled Griffin advising him, "He's holding his waistband! He's holding his waistband!"³

McDade ran through the parking lot into an alley that led to Sunset Avenue. As Griffin navigated the narrow and curved alleyway he struck a wall slowing their progress. McDade continued southwest across Sunset Avenue to westbound on the north sidewalk of Orange Grove Boulevard. Griffin followed McDade onto Orange Grove Boulevard and saw that he was still holding his waistband as he fled. McDade came to a sudden stop then doubled back eastbound on Orange Grove Boulevard. Newlen observed McDade nearly fall to the ground as he reversed direction. McDade used his left hand to catch himself while his right hand remained at his waist. McDade turned north onto Sunset Avenue and continued running on the west sidewalk. Newlen jumped out of the patrol car as Griffin came to a stop. He chased McDade north on Sunset Avenue and put out a radio broadcast that he was in a foot pursuit.

¹ The intersection of Fair Oaks and Orange Grove is approximately .2 miles west of the robbery location. The male was subsequently identified as Kendrec McDade. He was wearing black sweatpants and a long sleeved black shirt.

² Newlen has been a police officer with the Pasadena Police Department since April 16, 2007.

³ Griffin believed that he may have told Newlen, "Hey, he's got a gun!"

Meanwhile, Griffin reversed the patrol car on Orange Grove Boulevard and followed Newlen and McDade northbound on Sunset Avenue. McDade had a sizeable lead on Newlen and his right hand was still obscured at his waistband with his left arm swinging back and forth. Griffin believed that McDade was still in possession of a gun. He explained:

"[M]ost people run by swinging their hands and if somebody grabs their waistband, in my experience, it's that they're holding something in their waistband or they're preventing something from falling out. [McDade] continued to run with his hand like that. In other words, at every point that I saw him, he was still clutching his waistband. I felt that it was a gun that he didn't want to give up. In my experience, if somebody has, you know, drugs, they'll throw that as soon as they possibly can. They'll get rid of it. But guns, in my experience, are harder to come by and people sometimes don't want to give them up."⁴

Griffin passed McDade and stopped the patrol car in the street ahead of McDade in an attempt to contain him. McDade ran a few steps past the patrol car while still on the west sidewalk then suddenly turned into the street heading directly at Griffin. McDade's right hand was still not visible at his waistband. McDade stopped two and a half to three feet from Griffin facing the patrol car. Griffin believed that McDade was about to shoot and kill him as he sat confined in the car. Griffin described what he was thinking in that moment:

"He left the sidewalk and he's running at me. This -- this scares the crap out of me. I don't know why he's running at me. He's still clutching his waistband. I think he's got a gun. I'm stuck in the car. I got nowhere to go."

In fear for his life, Griffin fired his service weapon four times at McDade through the open driver's side window as McDade moved laterally down the side of the patrol car.⁵ Griffin believed that McDade was attempting to gain a better firing position from behind. Griffin dove to his right into the car to avoid getting shot by McDade. As he was leaning over while seated in the patrol car he heard two gunshots and believed that McDade was in fact firing at him. Griffin estimated that two seconds elapsed from the time McDade ran into the street until he heard the two gunshots.

After exiting the patrol car, Newlen chased McDade northbound on Sunset Avenue. He identified himself as a police officer and ordered him to stop. McDade ignored his commands. Newlen observed the patrol car pass them and stop in the middle of the street. McDade suddenly ran into the street directly at the driver's door of the patrol car. Newlen heard a gunshot and came to a stop. He believed that McDade was firing at Griffin. McDade then walked toward the rear of the car in a crouched position. McDade started to turn his upper body and look in Newlen's direction as he stood on the parkway 10 to 15 feet behind him. Newlen heard a second gunshot and saw a muzzle flash. Newlen believed that McDade was firing at him. In fear for his

⁴ Griffin has been a police officer with the Pasadena Police Department since August 28, 2006.

⁵ An examination of Griffin's service weapon determined that he had fired four rounds. Four casings matching the ammunition used by Griffin were recovered during the investigation.

life, Newlen fired his service weapon four to five times until McDade fell to the ground.⁶ Newlen requested a rescue ambulance as responding units began to arrive on the scene.

While waiting for fire department personnel to arrive, Officer Edgar Sanchez searched McDade. Sanchez removed a cellular phone from the front pocket of McDade's sweatpants. No weapons were located. Sanchez observed a beanie lying on the ground next to McDade.

McDade was transported to Huntington Memorial Hospital and treated for multiple gunshot wounds. He succumbed to his injuries during surgery. McDade was pronounced deceased on March 25, 2012, at 12:08 a.m.

Autopsy

Los Angeles County Deputy Medical Examiner Ogbonna Chinwah, M.D., performed a post-mortem examination on the body of Kendrec McDade on March 28, 2012. McDade sustained three fatal gunshot wounds to the left abdomen, middle lower abdomen and right arm. He sustained five non-fatal wounds to the left hip, left elbow, right leg and right forearm. The gunshot wounds to the left elbow, right arm and right forearm had a back to front trajectory while the other five gunshot wounds had a front to back and left to right trajectory. The toxicology report revealed that McDade's blood tested positive for the presence of marijuana and alcohol.

Other Witnesses

Antonio Arratia and his wife, Tasha Busch-Arratia, had parked their car at the grocery store located on the south side of Orange Grove Boulevard at Fair Oaks Avenue. Their car faced north with a view of Sunset Avenue. As Antonio exited the car, he heard helicopters overhead. He then saw McDade on the north side of Orange Grove Boulevard "tearing around" the corner to northbound Sunset Avenue at a very fast pace. At the same time, both Arratia and his wife observed a police car slam on its brakes just as it passed Sunset Avenue. The passenger door opened before the police car reversed then turned north onto Sunset Avenue. Arratia and his wife did not observe or hear the officer involved shooting.

Original Statements of Oscar Carrillo

On March 24, 2012, shortly after making the 9-1-1 call, Carrillo was interviewed at Arturo's Restaurant by Officer Cristian Allen. He stated that after purchasing food from the taco truck he returned to his car and observed a male leaning inside the open rear passenger door. A second male was standing to the rear of his car acting as a lookout. Carrillo told the first male to leave his property alone. The male stood up and turned slightly to his left. As he turned, Carrillo saw the muzzle end of a gun in his right hand held close to his body at stomach level. In fear of being shot, Carrillo remained silent. The male grabbed Carrillo's laptop bag from the rear

⁶ An examination of Newlen's service weapon determined that he had fired four rounds. Four casings matching the ammunition used by Newlen were recovered during the investigation.

floorboard and fled with the second male west on Orange Grove Boulevard. Carrillo got into his car and followed the two males while calling 9-1-1.

On March 25, 2012, at approximately 7:00 a.m., Carrillo was interviewed a second time by Detectives Keith Gomez and Carolyn Gordon. The statement he provided to the detectives was essentially the same as his original statement with one exception. Carrillo stated he was no longer certain that he saw a firearm in one of the suspect's hands. Instead he said that he saw a chrome cylindrical object with a hole pressed against the male's abdomen that "appeared" to be the barrel of a firearm.

Video Surveillance

Arturo's Restaurant has multiple surveillance cameras in and around the restaurant. The cameras captured footage of McDade and a male juvenile, subsequently identified as Greg E., loitering inside the restaurant and at the taco truck. On two separate occasions, Greg E. is seen entering the restaurant and attempting to open an unattended cash register. It also captured Greg E. taking property from Carrillo's vehicle parked on the street. McDade is seen standing behind the car during the theft and fleeing on foot with Greg E. At that point, Carrillo is shown walking in the direction that McDade and Greg E. had fled and pointing at them. He enters his car and makes a U-turn and appears to follow them in his car. The video does not depict any confrontation between Carrillo and Greg E. while the theft was in progress. One surveillance camera provided a clear view of the passenger side of Carrillo's vehicle. If the confrontation occurred as described by Carrillo it would have been seen by the camera. McDade and Greg E. are never seen brandishing a firearm.

Statement of Greg E.

Greg E. was detained at the northwest corner of Sunset and Orange Grove Boulevard shortly after the shooting. He was interviewed by Detectives Gomez and Gordon at the police station. He initially denied any involvement with the theft of the laptop computer or being with McDade that night. However, after viewing the video surveillance footage obtained from Arturo's Restaurant, Greg E. admitted taking the computer bag from the back seat of Carrillo's vehicle. He also acknowledged being with McDade at the restaurant. Greg E. denied having a firearm and stated that he never saw McDade in possession of a gun that night.

March 26, 2012 Statement of Oscar Carrillo

Carrillo was interviewed a third time due to the discrepancies between his statements and the video surveillance footage. Carrillo admitted that he never saw anyone enter his car and steal his laptop. He also admitted that he never saw a firearm or any object that resembled a firearm during the incident. He explained that he lied to 9-1-1 because he was mad and nervous. He believed that if he told the police that the suspects had guns it would generate a faster response to his call. Carrillo explained that he continued to lie to the police after learning about the shooting because he was scared and believed that his initial lies may have contributed to the shooting. He stated that it was easier for him to keep his story consistent.

LEGAL ANALYSIS

California law provides that the use of deadly force in self-defense or in defense of others is justifiable if the person claiming the right of self-defense or the defense of others honestly believes that he or others were in imminent danger of great bodily injury or death, and a reasonable person in the same circumstances would also deem it necessary to use deadly force in order to protect themselves or others from the deadly peril. Cal. Penal Code § 197; *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also* CALCRIM No. 505.

Actual danger is not necessary to justify the use of force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon these circumstances. The right to self defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App. 2d 577, 580.

"If the defendant acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken." *People v. Jackson* (1965) 233 Cal.App. 2d 639, 642.

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." *Graham v. Conner* (1989) 490 U.S. 386, 396-397.

In *Graham*, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances of each particular case." "Thus we must avoid substituting our personal notions of proper police procedures for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say that he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App. 2d 575, 589.

The test of whether the officer's actions were objectively reasonable is "highly deferential to the police officer's need to protect himself and others". *Munoz v. City of Union City* (2004) 120 Cal.App. 4th 1077, 1102.

"An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as

though to draw a gun.” *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. See *Ryder v. City of Topeka* (1987) 814 F.2d 1412, 1419 (concluding that, because a requirement that a suspect actually have a weapon would place police in “a dangerous and unreasonable situation ... whether a particular seizure is reasonable is dependent on the ‘totality of circumstances,’ and not simply on whether the suspect was actually armed.”)

CONCLUSION

When determining whether Griffin and Newlen acted in lawful self-defense, there only needs to be a showing of a threat based on the information the officers had at the time of the shooting. The law does not require the person claiming the right of self-defense to show that an actual threat existed. During the police investigation of the robbery, it was determined that Oscar Carrillo lied to the 9-1-1 operator when he claimed that he was robbed at gunpoint. There is no evidence to suggest that McDade was ever in possession of a firearm that night. Nonetheless, there was no reason for Griffin and Newlen to doubt the information they had received from dispatch and they acted upon it in good faith. The issue in this case, therefore, is whether Griffin and Newlen “reasonably believed” that they were in imminent threat of death or great bodily injury at the time that they discharged their firearms, and additionally, whether the use of force was justified under the circumstances.

Officers Griffin and Newlen were responding to an armed robbery call when they first observed McDade less than a quarter of a mile from the crime scene. McDade matched the physical and clothing description of the suspects and fled upon seeing the black and white patrol car turn in his direction. It was reasonable for Griffin and Newlen to conclude that McDade was one of the two outstanding armed suspects.

Dispatch had advised Griffin and Newlen that both suspects had guns during the robbery. They believed that the information was corroborated by their observations of McDade grabbing his waistband as he ran, suggesting he was holding onto a firearm. McDade had his hand at his waist during the entire pursuit; even as he nearly fell to the ground when he changed direction on Orange Grove Boulevard. As Newlen explained, the waistband is a location where individuals typically carry firearms. The fact that McDade was unwilling to discard what he was holding substantiated Griffin’s belief that he was concealing a firearm. Thus the information received from dispatch in connection with McDade’s behavior led both officers to reasonably believe that McDade was armed.

Griffin stopped the patrol car in the street in an attempt to contain McDade. McDade inexplicably ran into the street directly at Griffin. McDade came within a few feet of Griffin with his right hand still hidden from view. Griffin believed that McDade was an armed robbery suspect fleeing from the police with a concealed firearm at his waist. Concerned for his safety, Griffin had drawn his service weapon when he first saw McDade clutching his waistband at the beginning of the pursuit. McDade further escalated matters by running directly at Griffin as he sat confined in the patrol car. In fear for his life, Griffin fired four rounds at McDade out the open driver’s window. As McDade sidestepped toward the rear of the car, Griffin feared that he was seeking a position of advantage in order to shoot him from behind. Griffin dove to the passenger side of the front seat believing that his life was in danger.

Newlen observed McDade run toward Griffin in the street then heard a gunshot. He believed that McDade was firing at his partner. Under the circumstances, it was reasonable for Newlen to believe that it was McDade firing the weapon. To his knowledge, McDade was a fleeing felon armed with a handgun and refusing to obey his commands to stop. He then, in a brazen and aggressive manner, ran directly at Officer Griffin. McDade sidestepped down the side of the patrol car and turned in Newlen's direction. Newlen immediately saw a muzzle flash and heard a second gunshot. Newlen believed that McDade was firing at him. In fear for his life, Newlen fired his service weapon at McDade.

The actions of McDade during the pursuit in conjunction with the information known to the officers at the time of the shooting reasonably created a fear of imminent death or serious bodily injury. Once the officers perceived that McDade posed an apparent lethal threat, their response with deadly force was justified.

We find that Officers Matthew Griffin and Jeffrey Newlen acted in lawful self-defense and in defense of each other. We are closing our file and will take no further action in this matter.

Very truly yours,

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By 

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c: Officer Matthew Griffin, #3135
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